

THE HONORABLE THOMAS S. ZILLY

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

STRIKE 3 HOLDINGS, LLC, a Delaware
corporation,

Plaintiff,

vs.

JOHN DOE, subscriber assigned IP
address 73.225.38.130,

Defendant.

JOHN DOE subscriber assigned IP
address 73.225.38.130,

Counterclaimant,

vs.

STRIKE 3 HOLDINGS, LLC,

Counterdefendant.

NO. 2:17-cv-01731-TSZ

JOINT STATUS REPORT

Pursuant to this Court's May 3, 2019 Order (Dkt #118), the parties submit the following joint status report. The parties conferred telephonically on May 15, 2019 concerning whether the trial date of September 30, 2019 is realistic in light of discovery disputes and to file a Joint Status Report.

John Doe's Position

Discovery has been open in this case for more than a year. The issues are not complex and there are only two claims pending by Doe as against Strike 3 Holdings ("Strike 3") for declaratory relief of non-infringement and abuse of process.

The parties agreed to schedule expert depositions for early June, and Strike 3 has agreed to accommodate John Doe's request to take two additional depositions, if necessary. John Doe has taken the deposition of Strike 3's key witnesses and the third party declarant, Tobias Fieser.

John Doe is responding to a few discovery concerns Strike 3 has raised two days ago.

On May 7th, John Doe served Strike 3 with a subpoena directed to IPP seeking IPP's code. The parties have each exchanged additional written discovery, the responses to which are due on or before June 19th.

Currently there is ESI data that Strike 3 contends they need to access despite not having any affirmative claims for copyright infringement. John Doe has proposed adopting the WDWA Model ESI order in July, 2018. Strike 3 was not responsive to an ESI discussion until March, 2019. Strike 3 contends the WDWA model ESI agreement is inadequate and wants a different procedure.

John Doe as offered to accommodate proposed ESI "search strings" as presented by Strike 3. John Doe's records custodian is willing to accommodate a reasonable request on the ESI data.

The amount of discovery needed to complete in the last month is not abnormal. John Doe feels comfortable with the ability of the parties to complete discovery by the Discovery Cutoff Date.

John Doe does not anticipate any need to move the trial date.

Strike 3's Position

Plaintiff believes that a short extension of the discovery, dispositive motion cut-off date, and trial deadlines is warranted in this case. As John Doe's position already states, the parties agreed to schedule expert depositions for early June. On May 7th, John Doe served Strike 3 with a subpoena directed to IPP seeking IPP's code. The parties have each exchanged additional written discovery, the responses to which are due on or before June 19th. Although John Doe's states that Strike 3 "agreed to accommodate John Doe's request to take two additional depositions, if necessary[,]" Strike 3 learned of John Doe's request to depose two additional individuals only two days ago. Given the unusual nature of these particular requests, Strike 3 has not agreed to it and is still evaluating its position.

Currently there is ESI data (Defendant's computer hard drive) that Strike 3 needs to examine. Although John Doe claims that this computer hard drive is irrelevant since Strike 3 does not have "any affirmative claims for copyright infringement[,]" Defendant's computer hard drive and examination thereof is data upon which John Doe's expert relies in forming his expert opinion. And, it is relevant to John Doe's declaratory judgment of non-infringement claim. John Doe proposed adopting the WDWA Model ESI Order which limited Strike 3's hard drive examination to five "search strings." Strike 3 has rejected the WDWA Model ESI Order because, among other reasons, the computer hard drive examination conducted by John Doe's expert was not subject to such unreasonable limitations such as "search strings." Although Defendant claims to have over 130 computers in his possession, examining each of them under the parameters of this case would simply be impossible, and Plaintiff is only seeking to examine the desk top computer in Defendant's living room during the time of

1 infringement. Importantly, the computer used by Defendant's son was sold or otherwise
2 discarded after Defendant learned of the litigation.

3 Strike 3 is currently conferring with Defendant's counsel to determine whether
4 Defendant will provide complete answers regarding the amount of attorney's fees and costs (or
5 lack thereof) that he has paid in this case, and to what extent, if any, he will ever be required to
6 pay any fees. This is relevant in light of the fact that Defendant testified he is only seeking as
7 damages his attorneys' fees and costs. Strike 3 has propounded additional written discovery on
8 Defendant and his expert witnesses and anticipates taking depositions of each of Defendant's
9 experts. Finally, Strike 3 still must take the deposition of Defendant's son, and although it has
10 not received any specific dates of availability, it is hopeful it will be able to depose Defendant's
11 son the first week in June. Based on that testimony, Strike 3 may have to subpoena additional
12 third parties, in particular, any individuals/entities that received or have knowledge of the
13 computer that Doe's son sold or otherwise discarded after this litigation was commenced.
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16 Thus, in light of the need for sufficient time to address all of the above discovery needs
17 (and additional needs that might flow out of it) and the fact that there will likely be competing
18 summary judgment motions in this case, it is necessary to have a short extension of the
19 dispositive motion deadline and trial date. Counsel for Defendant, Adrienne McEntee,
20 indicated in the parties' meet and confer that the month of October 2019 was not available for
21 her. Thus, Plaintiff requests that the trial date be moved to a date in mid-to-late November of
22 2019, and the deadline for filing dispositive motions be extended from June 20, 2019 (which is
23 presently the day after discovery ends) to July 23, 2019. Indeed, with multiple depositions
24 scheduled for the last month of discovery, along with several written discovery responses
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1 anticipated, Plaintiff requires adequate time to evaluate all the information and utilize it for
2 dispositive motions.

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4 RESPECTFULLY SUBMITTED AND DATED this 17th day of May, 2019.

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CERTIFICATE OF SERVICE

I, J. Curtis Edmondson, hereby certify that on May 17, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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14 DATED this 17th day of May, 2019.

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